

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

MOUNT VERNON MILLS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0608

Decision No. CU 543

Counsel for claimant:

Venable, Baetjer & Howard

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by MOUNT VERNON MILLS, INC. in the amount of \$31,604.03 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in Maryland and that at all times between 1915 and presentation of this claim on December 22, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act. Claimant states that more than 99% of its stockholders are United States nationals.

The record contains copies of claimant's invoices reflecting the sale to consignees in Cuba of goods as well as letters from Cuban banks stating that these consignees had remitted payment for the goods to Cuban banks in local currency as follows:

CU- 0608

<u>Consignee</u>	<u>Amount Paid to Cuban bank</u>	<u>Date Cuban Bank Acknowledged Receipt Payment</u>
Augusti Hnos Y Cia	\$ 1,834.84	May 18, 1960 as to \$686.65
		May 21, 1960 as to \$1,148.19
Cia Cubana de Ecenados	3,264.15	December 1, 1959
Ferreteria Orriols, S. A.	894.55	January 24, 1961
Importadora Maler	990.66	May 4, 1960
Martinez Hno. y Cia	731.04	February 5, 1960
Perada, S. A.	14,363.72	May 4, 1960 as to \$9,699.70
		December 2, 1960 as to \$4,664.02
Rey Fraga y Cia S en C	6,734.48	July 19, 1960 as to \$3,617.43
		June 27, 1960 as to \$3,117.05
Varas Hno. y Cia	349.83	April 16, 1960

In all of the above collections, the Cuban bank stated that it was awaiting a dollar reimbursement release from the Monetary Stabilization Fund, a Cuban Government agency. Claimant states it has not received the funds.

Additionally, the record contains a copy of claimant's invoice Number H-270 of February 21, 1958 reflecting a balance for the sale of goods to Cosio Puente y Cia of Havana, Cuba totalling \$186.52; and claimant's invoice Numbers 9672, 19603 and 19633 of January 18, 1957 reflecting a balance owing for the sale of goods to Cosio Garcia y Cia S. Ltd. of Cuba totalling \$436.86; and claimant's invoice Numbers C-4325, C-5149, and H-1933 of August 15, 1959 and invoice Number C-5337 of August 24, 1959 reflecting a balance owing for the sale of goods to Valentin Garcia y Hnos of Cuba, totalling \$1,793.50. Claimant states that it has never received payment for these sales.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred as follows:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$ 2,416.88
December 2, 1959	3,264.15
February 6, 1960	731.04
April 17, 1960	349.83
May 5, 1960	10,690.36
May 18, 1960	686.65
May 22, 1960	1,148.19
June 28, 1960	3,117.05
July 20, 1960	3,617.43
December 3, 1960	4,664.02
January 25, 1961	894.55

the date of Law 568 as to the \$2,416.88 amount and the day after the collections were acknowledged by the Cuban branch banks as to the remainder amounts.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

A portion of this claim in the amount of \$23.88 is based on loss of payment for goods allegedly shipped to Vda de Barredo e Hyos. Claimant has stated however, that he is unable to locate supporting evidence to substantiate this portion of the claim. Accordingly, the Commission is constrained to deny this portion of the claim and it is hereby denied.

CU-0608

CERTIFICATION OF LOSS

The Commission certifies that MOUNT VERNON MILLS, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount Thirty-One Thousand Five Hundred Eighty Dollars and Fifteen Cents (\$31,580.15) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

OCT 25 1967

CERTIFICATION

THIS IS A TRUE AND
CORRECT COPY OF THE
PROPOSED DECISION
OF THE COMMISSION

Correct copy of the decision
is entered as the Final
Decision of the Commission
17 OCT 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims, Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU- 0608